

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

JOHN TORTORA,

Defendant.

18-Cr-537 (SHS)

ORDER

SIDNEY H. STEIN, U.S. District Judge.

The Court is in receipt of the government's letter dated December 8, 2020 (ECF No. 116), as well as defense counsel's response dated December 9. (ECF No. 117.) Both parties request a *Fatico* hearing on the issue of defendant's responsibility for the 1997 murder of Richard Ortiz. (*See* ECF No. 116 at 1 ("[T]he Government does, in fact, intend to argue that defendant was responsible for the murder of Richard Ortiz and, therefore, requests a *Fatico* hearing."); ECF No. 115 at 6 ("To the extent the Government continues to press the point, we request a *Fatico* hearing.")) That hearing will take place on March 1, 2021, at 9:30 a.m. in Courtroom 23A, U.S. Courthouse, 500 Pearl Street, New York, New York.

The government also requests that it be permitted to postpone filing its sentencing submission, which is currently due today, until after the *Fatico* hearing. Having been on notice that a *Fatico* hearing was likely since at least May, when defense counsel first objected to the Ortiz murder's inclusion in the draft Presentence Investigation Report (Def. Obj., ECF No. 108), the government shall file its sentencing submission no later than December 18.

It is unclear from defense counsel's sentencing submission whether it also seeks to challenge the various racketeering acts attributed to defendant in paragraph 8 of the Presentence Investigation Report (*see* PSR ¶ 8, ECF No. 109) at the *Fatico* hearing. Defense counsel shall inform the Court, in writing, no later than December 21 whether these activities are encompassed within its request for a *Fatico* hearing. Accordingly,

IT IS HEREBY ORDERED that:

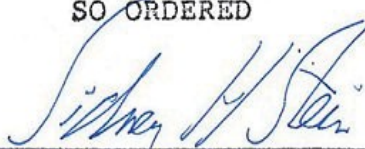
1. The government shall file its sentencing submission no later than December 18, 2020;
2. A *Fatico* hearing will take place on March 1, 2021, at 9:30 a.m., dependent on the state of the COVID-19 pandemic in New York City;

3. Defense counsel shall inform the Court on or before December 21, 2020, whether it intends to challenge the racketeering acts described in paragraph 8 of the PSR at that hearing.

4. The Court will set a briefing schedule for the matters covered by the *Fatico* hearing at the conclusion of that hearing.

5. Defendant's sentencing, currently scheduled for December 17, 2020, is adjourned *sine die*.

Dated: New York, New York
December 11, 2020

SO ORDERED


SIDNEY H. STEIN
U.S.D.J.